

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1648-CR

Cir. Ct. No. 2011CF711

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMIAH J. GOODPASTER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County:
WILLIAM M. GABLER, SR., Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jeremiah Goodpaster appeals an order denying his third motion to modify sentences imposed for domestic abuse strangulation and suffocation, domestic abuse intimidation of a victim as a repeater, and causing mental harm to a child as a repeater. He contends the circuit court improperly

exercised its discretion by denying the family court authority to decide whether he should have access to his children and instead giving the victim, C.K., and the Department of Corrections sole authority to control his access to the children. Because we conclude the circuit court properly exercised its discretion, we affirm the order.¹

¶2 The complaint alleged Goodpaster yelled at C.K., and woke the children. He put his hands around her throat, preventing her from breathing. When the children began to cry, telling him to stop, he told C.K.'s older son to call her a vulgar name, and when the child refused, Goodpaster offered to buy him five video games if he would do so. Goodpaster calmed down, but one hour later he again began calling C.K. vulgar names and slid a pair of scissors across her face saying, "who would love you after I cut your face all up?" He placed the scissors within an inch of her eye and across her throat and threatened to kill her. Later, when C.K. was trying to feed her infant, Goodpaster again began to strangle her, pulled down her pants, and tried to have sexual contact with her. When C.K. tried to leave, Goodpaster said she would be dead before he would let her do that, and he slept in front of the door to prevent her from leaving the room.

¹ The State views Goodpaster's arguments as a challenge to the initial sentence imposed in 2012, and it argues the challenge is untimely under either WIS. STAT. § 973.19(1)(a) or WIS. STAT. RULE 809.30(2)(h) (2015-16). We do not construe Goodpaster's arguments as a challenge to the sentencing court's discretion. Rather, his argument is comparable to a "new factors" argument based on his inability to show C.K. his rehabilitative progress and the family court commissioner's ruling that the family court lacked authority to overrule the criminal court's restrictions. As such, Goodpaster's motion and this appeal are timely.

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶3 Pursuant to a plea agreement, Goodpaster entered no-contest pleas to the three offenses, and the State agreed to dismiss but read in charges of sexual assault, second-degree recklessly endangering safety, false imprisonment, and disorderly conduct-domestic, all as a repeat offender. At the sentencing hearing, the circuit court considered the seriousness of the offenses, Goodpaster's character, and the need to protect the public. The court also considered a letter from C.K. in which she described the lasting harm Goodpaster did to her and the children as well as her desire to have no more contact with him. As a result, the court ordered no contact with C.K. during the prison sentence or while Goodpaster was on extended supervision, and contact with his children only if approved by both C.K. and the Department of Corrections agent.

¶4 In Goodpaster's first motion to modify the judgment as it relates to access to his children, he asked the circuit court to vacate the no-contact order or change it to "no violent contact," based on Goodpaster's completion of eight programs related to anger management, domestic violence, and parenting. The circuit court denied the motion based on Goodpaster's long history of repeatedly physically and emotionally assaulting C.K., the escalating level of violence, the effect of his crimes on the children, and C.K.'s letter. The court further ordered, "Should Mr. Goodpaster file any more motions to permit contact with [C.K.] or his children, while he is incarcerated in prison, any such motion will be summarily denied without an explanation."

¶5 In Goodpaster's present motion, he requests that the family court and a guardian ad litem be allowed discretion to permit his access to his children. He notes the family court commissioner determined that any contact with his children while he is in prison is controlled by the criminal court's restriction. He further notes that, because he can have no contact with C.K., she has no way of measuring

his growth, accomplishments, and behavior. Because all lines of communication with her have been severed, Goodpaster has no ability to secure her approval of his request for contact with the children. The circuit court summarily denied the motion “for the reasons described in [the order denying the first motion].”

¶6 The court properly exercised its discretion by denying Goodpaster’s request to remove or modify the no-contact order as the facts Goodpaster relies on are the same as the facts he presented in his first motion. That issue cannot be relitigated no matter how artfully it is rephrased. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). An inmate’s progress, response to treatment or rehabilitation does not constitute a new factor meriting a sentence modification. *State v. Krueger*, 119 Wis. 2d 327, 335, 351 N.W.2d 738 (Ct. App. 1984). Goodpaster also notes the sentencing court’s comments that the family court is better equipped to decide visitation issues, his agent’s willingness to contact C.K. and C.K.’s refusal to provide contact information, but his motion failed to provide any new factor analysis of those claims. The history of this case and the effect Goodpaster’s conduct had on C.K. and the children constitute sufficient reasons for the criminal court to maintain control over Goodpaster’s access to the children. Because it would be difficult to arrange Goodpaster’s contact with the children without compromising their mother’s desire to have no contact with Goodpaster, the court reasonably gave C.K. veto power over any visitation.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).

